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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAVID MICHAEL LEON,

Petitioner,

v.

JAMES A. YATES, Warden,

Respondent.

C 07-5719 CRB

ANSWER

Respondent hereby provides this answer to the petition for writ of habeas corpus and order to show cause:

I.
CUSTODY

Petitioner is lawfully confined in Pleasant Valley State Prison by James A. Yates, Warden, pursuant to a valid judgement and commitment entered May 23, 2003, in Santa Clara County Superior Court upon a jury verdict finding petitioner guilty of first degree murder, and personal use of a firearm. Cal. Penal Code §§ 187, 12022.5(a)(1). Petitioner was sentenced to a term of 27 years

1 to life in state prison. Petitioner's conviction was affirmed on appeal, and his petition for review
2 to the California Supreme Court was denied. His state habeas petitions were also denied.

3 **II.**

4 **PROCEDURAL ISSUES**

5 Petitioner has exhausted his available state remedies as to the claims raised. The petition
6 is timely within the meaning of 28 U.S.C. § 2244(d).

7 **III.**

8 **DENIAL OF CLAIMS**

9 Respondent generally denies that petitioner suffered any deprivation of constitutional
10 rights supporting habeas corpus relief in that he has failed to show the state court's ruling was
11 contrary to or an unreasonable application of clearly established Supreme Court precedent, or that
12 it involved an unreasonable determination of the facts. Respondent specifically denies petitioner's
13 claims as follows:

14 (1) There is no merit to petitioner's claim that his Fourteenth Amendment right to due
15 process was violated by the 17 year pre-accusation delay in charging him with murder.

16 (2) There is no merit to petitioner's claim that his Fourteenth Amendment due process
17 right to present a defense was violated by the exclusion of irrelevant evidence pertaining to possible
18 third party culpability.

19 (3) There is no merit to petitioner's claim that his constitutional rights to a jury trial and
20 to due process were violated by the court's dismissal of a biased juror during deliberations.

21 (4) There is no merit to petitioner's claim that he received constitutionally ineffective
22 assistance of appellate counsel.

23 (5) The petition is otherwise without merit.

24 (6) Respondent incorporates by reference the accompanying memorandum of points and
25 authorities and the accompanying exhibits, including any statements of fact material to the issues
26 addressed in this Answer. Respondent denies petitioner's allegations of fact insofar as they are
27 inconsistent with respondent's factual allegations herein.

1 **IV.**

2 **TRANSCRIPTS AND RECORDS**

3 Petitioner has presented his claims to the California Supreme Court by way of a petition
 4 for review from his direct appeal and a petition for review from the denial of his state habeas
 5 petition. We are submitting herewith the briefing on the merits in petitioner's direct appeal,
 6 petitioner's petition for review in the California Supreme Court, the denial of his petition for writ
 7 of habeas corpus in the California Court of Appeal, and petitioner's petition for review from that
 8 denial in the California Supreme Court petition as Exhibits 4 through 11. We are also submitting
 9 herewith 26 volumes of reporter's transcripts, 7 volumes of clerk's transcript, and 2 volumes of
 10 augmented reporter's transcript as Exhibits 1 through 3, which cover all proceedings. Petitioner has
 11 submitted all other pertinent exhibits with his petition. So far as respondent is aware, all relevant
 12 reported proceedings in state court have been transcribed. Rule 5, Rules governing Section 2254
 13 cases.

14 **CONCLUSION**

15 WHEREFORE, respondent asks that the Order to Show Cause be discharged and the
 16 petition for writ of habeas corpus be denied.

17 Dated: July 14, 2008

18 Respectfully submitted,

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